

Case No. A30-0290 civil (JWS)

Jeong Ho Lee

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for )  
the use of POONG LIM/PERT )  
JOINT VENTURE, )  
Plaintiff, )

vs )

DICK PACIFIC/GHEMM JOINT )  
VENTURE, CONTINENTAL CASUALTY )  
COMPANY, NATIONAL FIRE )  
INSURANCE COMPANY OF )  
HARTFORD, SEABOARD SURETY )  
COMPANY, and ST. PAUL FIRE )  
AND MARINE INSURANCE COMPANY, )  
Defendants. )

Case No. A03-0290 Civil (JWS)

DEPOSITION OF DICK PACIFIC/GHEMM JOINT VENTURE

JEONG HO LEE  
(Personal)  
Taken March 23, 2005  
Commencing at 10:55 a.m.

Taken by the Defendants  
at  
Renaissance Seoul Hotel  
Seoul, Korea  
676 Yeoksam-dong, Gangnam-gu, Seoul, Korea, 135-915

EXHIBIT 1  
Page 1 of 5 Pages

1 SEOUL, KOREA WEDNESDAY, MARCH 23, 2005, 10:55 A.M.

2  
3 JEONG-WON HONG,  
4 was sworn on oath to interpret English  
5 into Korean, and Korean into English  
6 to the best of her ability.  
7

8 JEONG HO LEE,  
9 deponent herein, being sworn on oath,  
10 was examined and testified as follows:  
11

12 EXAMINATION

13 BY MR. POLLOCK:

14 Mr. Lee, the deposition we have taken this  
15 morning and on Monday was a deposition under Federal  
16 Rule of Civil Procedure 30 (b)(6). You were designated  
17 as the corporate representative with regard to the  
18 plaintiff, Poong Lim's claims against the defendants.

19 A Yes.

20 Q That deposition concluded awhile ago, and we  
21 will now take your deposition in your individual  
22 capacity.

23 So the same basic rules apply in that you are  
24 under oath and providing sworn testimony.

25 A Yes.

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1 Poong Lim/Se Jin contract or was this just the  
2 contract value?

3 A 350,000 United States dollar amount includes  
4 the approved change orders for Poong Lim and Se Jin,  
5 including exterior work support, stair and erection  
6 aids. He does not know whether other change orders  
7 were made afterwards.

8 MR. MACHETANZ: Can I get a clarification  
9 here. At one time I thought it was 325,000 and then I  
10 heard 350,000.

11 MR. POLLOCK: Yes.

12 THE INTERPRETER: 325,000.

13 MR. POLLOCK: 325 total and contract amount.

14 THE WITNESS: Yes.

15 MR. MACHETANZ: Thank you.

16 BY MR. POLLOCK:

17 Q Did Poong Lim withhold any money from Se Jin  
18 on the Bassett Project?

19 A He is not sure whether we have withheld or  
20 not from Se Jin.

21 Q Did Poong Lim issue any deductive change  
22 orders to Se Jin on the Bassett Project?

23 A We didn't issue any deductive change orders.  
24 We issued only the increasing change orders. And he  
25 understands that we have more change orders which will

EXHIBIT 1

1 be increasing change orders to be issued to Se Jin.

2 Q Who at Poong Lim, other than yourself, would  
3 have knowledge concerning payments made by Poong Lim  
4 to Se Jin on the Bassett Project?

5 A The person who is in charge of contracts,  
6 H.Y. Lee.

7 Q What pending change orders are there existing  
8 between Poong Lim and Se Jin concerning the Bassett  
9 Project?

10 A Among the change orders that we submitted,  
11 change order 8 and change order 9.

12 And also we have a change order which is part  
13 of the change order containing the detailing manhours.  
14 It is also related to Se Jin.

15 On the Exhibit 345 we have detailing  
16 manhours.

17 Q So change orders 8 and 9 which are identified  
18 on Exhibit 345.

19 So is the resolution of that change order 8  
20 and 9 as between Poong Lim and Se Jin contingent on  
21 Poong Lim recovering in this lawsuit?

22 A Yes, it's related.

23 Q What agreements or understandings have Se Jin  
24 and Poong Lim reached concerning the outcome of this  
25 litigation?

1           A       Se Jin and Poong Lim did not document any  
2       specific agreement on this matter. But both Se Jin  
3       and Poong Lim share the understanding that all these  
4       issues are due to the external impact. And both the  
5       parties have the understanding that we should have  
6       desirable consequences from the litigation.

7                       So after the judgments are made, the two  
8       parties will address the issue on a goodwill basis.

9           Q       As to the amounts identified in change orders  
10       8, 9 and 12 that would be attributable to Se Jin's  
11       detailing, those amounts, am I correct, have not  
12       currently been paid to Se Jin?

13          A       Yes, that's correct.

14                   MR. POLLOCK: Why don't we take another  
15       ten-minute break here.

16                               (Recess taken.)

17                   Back on the record.

18          Q       Mr. Lee, the subcontract issue in the Bassett  
19       Project is with Poong Lim/PERT; is that correct, a  
20       joint venture between Poong Lim/PERT?

21          A       Yes.

22          Q       What was PERT's role in the joint venture?

23          A       Poong Lim's role spans to the CIF to the port  
24       of the United States, and PERT steps in from that  
25       point, and PERT takes care of the duty related issues

EXHIBIT 1



서울시 강남구 역삼동 823번지  
풍림빌딩 12층

公證  
認可

法務法人 亞洲

LAW OFFICES OF AJU INTERNATIONAL

공 증 실 : 02.3016.5240  
팩 스 : 02.3016.5241

[제41호 서식]

등부 2006년 제 00401 호

Registered No. 2006 - 00401

인 증 서

NOTARIAL CERTIFICATE

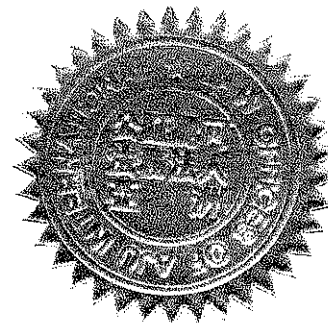


EXHIBIT 2  
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### PASS THROUGH AGREEMENT

WHEREAS Sejin supplied shop drawing services to Poong Lim/Pert Joint Venture (hereinafter "PL") on the Bassett Hospital replacement project (hereinafter "project");

WHEREAS Sejin and PL have project claims which are based on actions and inactions by the project general contractor Dick Pacific/Ghemm Joint Venture ("DPG"); and

WHEREAS Sejin and PL previously agreed orally that PL would pass-through Sejin's project claims against DPG; and

WHEREAS Sejin and PL now wish to enter into a pass-through agreement to memorialize in writing the terms under which those claims will be prosecuted, the parties recognizing that under United States federal law, it would be better to definitize the terms and place them in writing;

NOW, THEREFORE, Sejin and PL agree as follows:

1. Except as stated below, Sejin hereby releases any and all claims, either known or unknown, relating to the project that it may have against PL and its agents, employees, successors, assigns, sureties and/or insurers relating to the project. Except as stated below, PL hereby releases any and all claims, known or unknown, relating to the project that it may have against Sejin and its agents, employees, successors, assigns and/or insurers relating to the project.
2. Both parties desire to jointly pursue claims against DPG and its payment bond sureties (collectively "DPG") on the above project relating to damages incurred by each party as a result of the DPG's acts and omissions, so PL, on its own behalf and on behalf of Sejin, has filed suit against DPG. The parties agree to fully cooperate with each other in pursuit of such claims against DPG.
3. The parties mutually agree that, except as may be recovered from DPG, they will pursue no project claims against each other except as provided below. PL remains liable to

Sejin only to the extent that DPG is liable on claims prosecuted under this agreement. The parties have specifically contemplated the Severin doctrine in making this agreement. This is not a release for purposes of the Severin doctrine, if that doctrine is deemed applicable in any way under Alaska law. The parties agree to look for payment solely to the fund created by DPG. Regardless of whether the fund be created by the settlement, trial or on appeal from any trial, it is the sole source of any funds to be recovered on the claims hereunder.

4. In allocating funds obtained from the DPG between the parties, the parties will first try to obtain a specific segregation of funds in any settlement or trial in this matter. In the event that they are unable to obtain a specific segregation, then the funds will be divided on an equitable basis with PL having the final decision on division, taking into account any amounts paid to DPG or International Steel, and the costs and attorneys fees incurred by PL in prosecuting the claims.

5. PL shall initially bear the attorneys' fees and costs associated with the joint pursuit of this claim, but the fees and costs shall be reallocated between the parties following the trial, based on each party's respective recovery. If any fees and costs are awarded against PL in any trial of this matter, the fees and costs shall be borne by PL.

6. The decision of whether or not to settle project claims shall be at the sole and absolute discretion of PL.

7. This pass through agreement does not extinguish, modify, limit or otherwise affect (a) warranty claims under the prime contract and/or subcontract; and (b) claims for indemnification, apportionment, contribution and the like arising from or related to claims of third parties.

8. The parties hereto acknowledge that they have no claims against the other relating to the project which are not dealt with in this agreement.



9. This agreement shall constitute the sole and complete agreement of the parties and shall not be changed, modified or abridged except by written agreement subscribed by the parties hereto.

Dated: 3 APRIL 2006

Sejin

by

its

Se Jin

PRESIDENT

Dated: 3 APRIL 2006

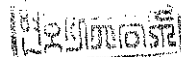
Poong Lim/Pert Joint Venture

by

its

Poong Lim

EXECUTIVE DIRECTOR



서울 강남구 역삼동 823번지  
(풍림빌딩 12층)

公證  
認可

法務法人 亞 洲

LAW OFFICE OF AJU INTERNATIONAL

대표전화 : 3016-5200

공 증 실 : 3016-5240

F A X : 3016-5241

[제42호 서식]

등부 2006년 제 00401호

Registered No. 2006 - 00401

인 증

NOTARIAL CERTIFICATE

위 계약서 -----

에 기재된 주식회사 세진설계 대표이사  
김영신, 김경환 등은-----

본직의 면전에서 위 사서증서에 자기가  
서명한 것임을 자인하였다.

Young Shin Kim, President of Sejin and  
Kyung Hwan Kim, personally appeared  
before me and admitted their subscription  
to the attached PASS THROUGH  
AGREEMENT.

2006년 04월 03일

이 법인사무소에서  
위 인증한다.

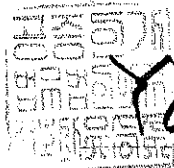
This is hereby attested on this 03rd day  
of April, 2006 at this office.

공증인가 법무법인 아 주

서울시 강남구 역삼동 823번지

LAW OFFICE OF AJU INTERNATIONAL  
12Fl., Poonglim Bldg, 823 Yeoksam-dong  
Gangnam-gu, Seoul, Korea

유승수



Attorney-at-law acting as Notary Public

담당변호사

유 승 수

SEUNG-SOO YOO

본 법인은 법률 제3790호에 의거하여  
1994년 11월 7일 법무부 장관으로부터  
공증인 업무를 행할 것을 인가받았다.

This Office has been authorized by the  
Minister of Justice, the Republic of Korea,  
to act as Notary Public since Nov. 7. 1994  
under Act No. 3790.

EXHIBIT 2  
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### CERTIFICATE

The undersigned hereby certify that The English Version of PASS THROUGH AGREEMENT executed between Sejin and Poong Lim has been translated into the Korea Version, as attached hereto, at the best of my knowledge.

I also confirm that both English and Korean Version of the said Agreement has been read to Mr. Kim of Sejin for his full understanding of the whole content of the said Agreement.

Date: 3 April 2006

Lee Hee Young  
Lee Hee Young  
Name of Translator

## PASS THROUGH AGREEMENT

Sejin 은 Bassett Hospital replacement 프로젝트 건에 대하여 Poong Lim/Pert JV(이하 "PL") 로 도면 제작 서비스를 제공하였으며,

Sejin 과 PL 은 원청사인 Dick Pacific/Ghemm Joint Venture (이하 "DPG")의 행위와 비행위에 대해 소송을 제기하며,

Sejin 과 PL 은 PL 이 DPG 에 대한 Sejin 의 소송건을 통과시킬 것을 구두상으로 이전 합의하였으며,

Sejin 과 PL 은 이제 소송 제기를 위한 서면 작성에 있어서 PASS THROUGH AGREEMENT 을 맺기를 바라며 본 협약내의 조항에 따라 소송이 진행된다. 당사자들은 미 연방법 하에 PASS THROUGH AGREEMENT 을 인정한다. PASS THROUGH AGREEMENT 내의 조항은 정확히 명시하여 서면작성을 하여야 하기에, Sejin 과 PL 은 다음에 합의한다. :

1. 아래와 같이 언급된 경우를 제외하고, Sejin 은 프로젝트와 관련하여 PL 과 PL 의 중개인, 직원, 승계자, 수탁인, 인수인이나 프로젝트와 관련된 보험자에 대한 어떠한 소송도 제기 하지 않는다. 아래와 같이 언급된 경우를 제외하고, PL 은 프로젝트와 관련하여 Sejin 과 Sejin 의 중개인, 직원, 승계자,

수탁인, 인수인이나 프로젝트와 관련된 보험자에 대한 어떠한 소송도 제기 하지 않는다

2. 양 당사자는 DPG 와 지급 보증 담보 에 대해 공동으로 소송 제기 할 것을 희망한다. 이 소송은 본 프로젝트에서 DPG 의 행위와 직무태만으로 인하여 각 당사자가 빚은 손해와 관련한다. 그리하여 PL 은 PL 과 Sejin 을 대표하여, DPG 에 소송을 제기 했다. 당사자들은 DPG 소송을 위해 전적으로 협력할 것에 동의 한다.

3. 당사자들은 DPG 에 의해 손해 배상을 받은 경우를 제외 하고 다음과 같은 사항에 대해 상호간에 동의한다. 아래 언급된 경우를 제외하고는 어떠한 프로젝트와 관련해서도 서로에게 소송을 제기 하지 않는다. PL 은 본 협의 하에 진행된 소송에 대해서 DPG 가 갚아야 할 부채에 대해서만 비용을 지불 할 의무가 있다. 당사자들은 본 협약서 작성에 있어서 특히 Severin Doctrine 을 참고한다. Severin Doctrine 이 Alaska 법에 적용 되더라도 이것은 Severin Doctrine 의 알리기 위함이 아니다. 당사자는 DPG 에 의해 발생한 자금에 관한 비용만을 기대한다. 본 소송과 관련한 어떠한 소송에 의해서 발생한 합의금인지 여부와는 상관없이, 그것은 본 소송에 의거한 배상금이다.

4. DPG 와 당사자사간에 발생한 QLDYD 할당 시, 당사자들은 본 사건과 관련하여 비용 분배를 할 것이다. 비용 분배가 불가능 할 경우에, DPG 와

International Steel 에 지급 해야 할 비용과 PL 이 본 소송을 진행하면서 발생한 비용과(변호사 비용 포함)을 고려할 때 자금은 형평법에 근거 하여 PL 이 최종 결정을 한다

5. PL 은 본 소송 제기를 공동으로 진행하면서 발생한 변호사 비용과 그 외 비용을 감수 해야 한다. 그러나 본 소송에 따라 당사자들 사이에서 이 비용은 다시 분배가 이루어 져야 하며, 비용 분배시 당사자들간의 보상비용에 의거한다. 만약 본 사건에 대에 PL 이 고소를 당한 경우 이에 따라 소요된 어떠한 비용도 PL 은 비용은 다시 발생시킬 수 있다..

6. 본 소송에 대한 합의 여부는 오직 PL 의 결정에 따른다.

7. 본 PASS THROUGH AGREEMENT 는 소멸, 제한 되지 않는다. 그렇지 않으면, 이것은(a) 주계약 또는 하도급 계약에 본 소송, (b) 배상, 분담, 기부와 제 삼자에 의한 소송으로 인해 발생한 것과 관련된 소송에 영향을 미친다..

8. 당사자들은 다른 프로젝트와 관련하여 본 협약과 관련이 없는 소송은 제기 하지 않는다는 것을 숙지 하고 있다.

9. 본 협약서는 당사자들의 동의에 의해 완성된 단 하나의 동의서이며 이 내용은 수정, 변경 또는 압축 되지 않는다. 단지, 당사자들에 의한 서명이 된 경우에는 제외된다.

Dated: \_\_\_\_\_ Sejin

by \_\_\_\_\_

its \_\_\_\_\_

Dated: \_\_\_\_\_ Poong Lim/Pert Joint Venture

by \_\_\_\_\_

its \_\_\_\_\_

Case No. A03-0290 Civil (JWS)

Kim Young Shin

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for )  
the use of POONG LIM/PERT )  
JOINT VENTURE, )  
Plaintiff, )

vs )

DICK PACIFIC/GHEMM JOINT )  
VENTURE, CONTINENTAL CASUALTY )  
COMPANY, NATIONAL FIRE )  
INSURANCE COMPANY OF )  
HARTFORD, SEABOARD SURETY )  
COMPANY, and ST. PAUL FIRE )  
AND MARINE INSURANCE COMPANY, )  
Defendants. )

Case No. A03-0290 Civil (JWS)

DEPOSITION OF DICK PACIFIC/GHEMM JOINT VENTURE

KIM YOUNG SHIN

Taken March 24, 2005  
Commencing at 2:00 p.m.

Taken by the Defendants  
at  
Renaissance Seoul Hotel  
Seoul, Korea  
676 Yeoksam-dong, Gangnam-gu, Seoul, Korea, 135-915

EXHIBIT 3  
Page 1 of 4 Pages



Case No. A03-0290 Civil (JWS)

Kim Young Shin

Page 2	Page 4
<p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2</p> <p>3 For Plaintiff:</p> <p>4 OLES, MORRISON, RINKER &amp; BAKER, LLP</p> <p>5 By: Traeger Machetanz</p> <p>6 745 W. Fourth Avenue, Suite 502</p> <p>7 Anchorage, Alaska 99501</p> <p>8 907-258-0106</p> <p>9</p> <p>10 For Defendants:</p> <p>11 DAVISON &amp; DAVISON, INC.</p> <p>12 By: Joseph Pollock</p> <p>13 3351 Arctic Boulevard</p> <p>14 Anchorage, Alaska 99503</p> <p>15 907-363-6555</p> <p>16 and</p> <p>17 ERIK D. EIKE</p> <p>18 707 Richards Street</p> <p>19 Suite 2012</p> <p>20 Honolulu, Hawaii 96813</p> <p>21 808-537-5950</p> <p>22 Interpreters:</p> <p>23 JEONG-WON HONG</p> <p>24 YEONJOO KANG</p> <p>25</p> <p>Also Present:</p> <p>SIN DOO KANG</p> <p>Court Reporter:</p> <p>Barbara Blowers</p> <p>BE IT KNOWN that the aforementioned deposition was taken at the time and place duly noted on the title page, before Barbara Blowers, Registered Professional Reporter and Notary Public within and the state of Alaska.</p>	<p>1 SEOUL, KOREA. MARCH 24, 2005, 2:00 P.M.</p> <p>2</p> <p>3 JEONG-WON HONG,</p> <p>4 the Korean interpreter was sworn on oath</p> <p>5 to interpret English into Korean and</p> <p>6 Korean into English.</p> <p>7</p> <p>8 KIM YOUNG SHIN,</p> <p>9 deponent herein, being sworn on oath,</p> <p>10 was examined and testified as follows:</p> <p>11</p> <p>12 EXAMINATION</p> <p>13</p> <p>14 BY MR. POLLOCK:</p> <p>15 Q Mr. Kim, we've met previously. My name is</p> <p>16 Joe Pollock, and I represent the defendants, Dick</p> <p>17 Pacific/Ghemm and four insurance companies in a</p> <p>18 lawsuit initiated by Poong Lim/PERT Joint Venture.</p> <p>19 The lawsuit is pending in the United States District</p> <p>20 Court for the District of Alaska, located in</p> <p>21 Anchorage, Alaska.</p> <p>22 The lawsuit arises out of a construction</p> <p>23 project known as the Bassett Hospital Replacement</p> <p>24 Project, located at Fort Wainwright, Alaska.</p> <p>25 We have asked you to come here today to</p>
Page 3	Page 5
<p>1 I-N-D-E-X</p> <p>2</p> <p>3 PAGE</p> <p>4 EXAMINATION</p> <p>5 BY MR. POLLOCK 4</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 353 - Multiple e-mails 38</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 EXHIBIT <u>3</u></p> <p>22 Page <u>2</u> of <u>4</u> Pages</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 provide sworn, under-oath testimony concerning this</p> <p>2 litigation.</p> <p>3 The testimony that you will provide in this</p> <p>4 deposition today, may be used in the litigation</p> <p>5 pending in Anchorage, Alaska.</p> <p>6 I will be asking you a series of questions,</p> <p>7 and if for some reason you do not understand any</p> <p>8 question, please let me know, and I will try to</p> <p>9 rephrase it in a manner so that you can understand it.</p> <p>10 It is particularly important, given that we are</p> <p>11 translating the questions into Korean.</p> <p>12 During the course of the deposition,</p> <p>13 Mr. Machetanz may have occasion to make objections,</p> <p>14 and he will do that for the record. But unless he</p> <p>15 instructs you otherwise, you can go ahead and answer</p> <p>16 the question if he objects.</p> <p>17 And we've been taking breaks about once an</p> <p>18 hour or so, but in the event that you need to take a</p> <p>19 break before then, just let us know, and we will take</p> <p>20 a break.</p> <p>21 Would you state your name for the record?</p> <p>22 A His name is Kim Young Shin. Family name Kim,</p> <p>23 K-i-m, and first name is Young Y-o-u-n-g, Shin,</p> <p>24 S-h-i-n.</p> <p>25 Q Mr. Kim, have you had your deposition taken</p>

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Kim Young Shin

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<p>1 before?</p> <p>2 A No.</p> <p>3 Q Are you represented by an attorney today?</p> <p>4 A Yes.</p> <p>5 Q Mr. Machetanz?</p> <p>6 A Yes.</p> <p>7 Q Outside of discussions with Mr. Machetanz or</p> <p>8 Mr. Butler, have you had any discussions with anyone</p> <p>9 about this deposition before you came here today?</p> <p>10 A No.</p> <p>11 Q Mr. Kim, do you speak English?</p> <p>12 A No, almost not.</p> <p>13 Q I don't speak any Korean.</p> <p>14 Mr. Kim, do you read English?</p> <p>15 A No.</p> <p>16 Q Mr. Kim, were you involved in matters</p> <p>17 concerning the Bassett Hospital Project?</p> <p>18 A He did.</p> <p>19 Q Who is your current employer?</p> <p>20 A He's currently working for Se Jin</p> <p>21 Engineering.</p> <p>22 Q What is your position with Se Jin?</p> <p>23 A He is a representative.</p> <p>24 Q Are you a corporate officer of Se Jin?</p> <p>25 A Yes.</p>	<p>1 companies?</p> <p>2 A Separate and independent.</p> <p>3 Q Okay.</p> <p>4 Mr. Kim, what was your involvement with the</p> <p>5 Bassett Project?</p> <p>6 A He took the leading role in regards to the</p> <p>7 Bassett Project and if a drawing is prepared, he</p> <p>8 reviewed the drawing.</p> <p>9 Q Did Se Jin have a contract with Poong Lim for</p> <p>10 the Bassett Project?</p> <p>11 A Yes.</p> <p>12 Q Was that contract in writing?</p> <p>13 A Yes.</p> <p>14 Q When was that contract first entered into?</p> <p>15 A He does not remember the specific date, but</p> <p>16 actual activities upon the orders of Poong Lim started</p> <p>17 in the middle of February, 2002.</p> <p>18 Q What was the scope or what were the</p> <p>19 obligations that Se Jin assumed as a result of the</p> <p>20 contract existing between Poong Lim and Se Jin?</p> <p>21 A The first order stipulated that Se Jin would</p> <p>22 provide the shop drawings of structural steel with</p> <p>23 regard to the Bassett Project.</p> <p>24 Q How much was the value of this contract?</p> <p>25 A After the original contract was signed, he</p>
Page 7	Page 9
<p>1 Q What is your corporate position?</p> <p>2 A Representative president of the company.</p> <p>3 Q Are you a shareholder or owner of Se Jin?</p> <p>4 A He's the owner of Se Jin Engineering.</p> <p>5 Q Do you own the entire company?</p> <p>6 A Practically owns the entire company, but in</p> <p>7 order to meet the registration requirement we have</p> <p>8 some registered executives.</p> <p>9 Q What percentage of the company do you own?</p> <p>10 A Sixty percent under his name.</p> <p>11 Q Who are the other owners of Se Jin besides</p> <p>12 yourself?</p> <p>13 A His wife and son.</p> <p>14 Q Anyone else?</p> <p>15 A And two relatives.</p> <p>16 Q Does Poong Lim in any way have any ownership</p> <p>17 interest in Se Jin?</p> <p>18 A You mean ownership in trust?</p> <p>19 Q Yes.</p> <p>20 A Poong Lim does not have any executive</p> <p>21 interests in Se Jin.</p> <p>22 Q Are any of the Poong Lim officers, employees</p> <p>23 or shareholders owners of Se Jin?</p> <p>24 A No.</p> <p>25 Q So Se Jin and Poong Lim are separate</p>	<p>1 made two changes to the contract. But what he</p> <p>2 remembers in terms of the contract of the original</p> <p>3 contract was 280 million Korean won.</p> <p>4 Which is approximately \$280,000.</p> <p>5 Q In this original contract, did Se Jin</p> <p>6 obligate itself to provide all the shop drawings for</p> <p>7 structural steel that Poong Lim had obligated itself</p> <p>8 to provide to Dick Pacific?</p> <p>9 A He's not quite sure what the shop drawing of</p> <p>10 the structural steel means, but what he says is the</p> <p>11 original contract included the shop drawings of the</p> <p>12 structural steel that Poong Lim is to provide to Dick</p> <p>13 Pacific.</p> <p>14 Q You mentioned two changes to the contract.</p> <p>15 What do you recall the two changes to the</p> <p>16 contract being?</p> <p>17 A The first change was to add the stair related</p> <p>18 part to the contract.</p> <p>19 And second contract change was to add the</p> <p>20 exterior wall support.</p> <p>21 Q Does he recall the value of the change orders</p> <p>22 for those two respective changes?</p> <p>23 A He does not remember the specific amount for</p> <p>24 each change. But what he remembers is the final</p> <p>25 contract value which was 326 million Korean won.</p>

EXHIBIT

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3 (Pages 6 to 9)

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Kim Young Shin

<p style="text-align: right;">Page 10</p> <p>1 Q And has Poong Lim paid Se Jin the entire 2 amount of its contract, including change orders? 3 A Yes. 4 Q Did Poong Lim assert any claims against Se 5 Jin arising out of the Bassett Project? 6 A No, not directly yet. 7 Q What about indirectly? 8 A What he means is that he heard over the phone 9 from Poong Lim that the contract party claim of the 10 drawings, but he didn't receive that type of claim 11 from Poong Lim directly. 12 Q Can you repeat that answer? 13 THE INTERPRETER: When he had a phone call 14 with a Poong Lim person, then during the phone 15 conversation he heard that some claims were raised by 16 the other party. But Poong Lim did not raise this 17 type of claims again Se Jin. 18 BY MR. POLLOCK: 19 Q So referring to claims raised by Dick Pacific 20 against Poong Lim? 21 A Yes. Because Dick Pacific is the only party 22 from which Poong Lim will receive claims. 23 Q Does Poong Lim promise to pay Se Jin any 24 money as a result of the outcome of the litigation 25 between Poong Lim and Dick Pacific?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Is Se Jin strictly an engineering company or 2 does it provide construction services? 3 A It's solely an engineering company. 4 Q Does Se Jin have a particular focus, say 5 mechanical, electrical, structural, geotechnical? 6 What specialty does Se Jin have? 7 A Se Jin is a structural company, so prepares 8 the shop drawings and also the base drawings for the 9 shop drawings. 10 Q Does Se Jin provide architectural services? 11 A When you say architectural services, does 12 that mean preparing architectural drawings? 13 Q Yes. 14 A No. 15 Q Does Se Jin do any civil engineering? 16 A No. What they focus on is only the 17 structural steel related area. 18 Q What were the dollar values of Se Jin's gross 19 sales for 2002 and 2003? 20 A In 2002, what he remembers is that the sales 21 were ranged from 700 billion to -- 700 million to 22 750 million won and in 2003 the sales were 23 approximately 800 million Korean won. 24 Q Which would be 800,000?? 25 THE INTERPRETER: Approximately.</p>
<p style="text-align: right;">Page 11</p> <p>1 A Yes. 2 Q What is your understanding concerning any 3 agreements or arrangements with Poong Lim regarding 4 the outcome of the litigation between Poong Lim and 5 Dick Pacific? 6 A Can you elaborate more on your question? 7 Q Has Poong Lim promised to pay Se Jin money in 8 the future if it recovers from Dick Pacific? 9 A Poong Lim didn't say a specific amount, but 10 what Poong Lim did say is that because Se Jin, some 11 manhours are spent on the project, they will make some 12 payments after the litigation. 13 Q Has Poong Lim promised to pay any specific 14 amount to Se Jin? 15 A Not a specific amount. 16 Q After the Bassett Project, did Se Jin and 17 Poong Lim contract on any other projects? 18 A After the Bassett Project, Poong Lim Industry 19 stopped fabricating structural steel product. 20 So, no, currently Poong Lim is working on 21 steel bridges only. 22 Q What type of services does Se Jin Engineering 23 provide? 24 A He's not quite sure what services means? 25 Businesses you mean?</p>	<p style="text-align: right;">Page 13</p> <p>1 BY MR. POLLOCK: 2 Q How many licensed professional engineers does 3 Se Jin currently have on staff? 4 A You mean certified PE's? 5 Q Yes. 6 A We have two PE's and also the employees of Se 7 Jin has some other types of certifications. 8 Q Did Se Jin have two PE's on staff in 2002 and 9 2003? 10 A From what he remembers, we had more PE's than 11 now. 12 Q During 2002 and 2003, does he have a 13 recollection of the number of employees that Se Jin 14 employed? 15 A On average, we have 20 employees, around. 16 Q So for 2002, would the Bassett Project have 17 comprised about 50 percent of your workload? 18 A More than 50 percent. 19 Q How about 2003, approximately what percentage 20 of his firm's resources were devoted to the Bassett 21 Project in 2003? 22 A What he can say is that the members who 23 worked on the Bassett Project in 2002 continued to do 24 their work on Bassett Project until April. And the 25 number of exact persons may change either plus or by</p>

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the use  
of POONG LIM/PERT JOINT VENTURE,

Plaintiff,

vs.

DICK PACIFIC/GHEMM JOINT VENTURE,  
CONTINENTAL CASUALTY COMPANY,  
NATIONAL FIRE INSURANCE CO. OF  
HARTFORD, SEABOARD SURETY CO.,  
and ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,

Defendants.

\_\_\_\_\_  
Case No. A03-0290 Civil

DEPOSITION OF STEPHEN C. SCHWARTZ

VOLUME I

Pages 1 - 224, inclusive

Thursday, May 25, 2005, 9:00 A.M.

Taken by Counsel for Defendants

at

Law Offices of Oles, Morrison, Rinker & Baker, LLP

745 W. Fourth Avenue, Suite 502

Anchorage, Alaska

EXHIBIT 4  
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## STEPHEN C. SCHWARTZ, VOL. I

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<p>1 A-P-P-E-A-R-A-N-C-E-S  2 For Plaintiff:  3 LAW OFFICES OF OLES, MORRISON, RINKER &amp; BAKER, LLP  4 By: J. Craig Rusk, Esq.  5 701 Pike Street, Suite 1700  6 Seattle, WA 98101  7 206/623-3427  8  9 For Defendants:  10 LAW OFFICES OF DAVISON &amp; DAVISON  11 By: Bruce E. Davison, Esq.  12 3351 Arctic Boulevard  13 Anchorage, AK 99503  14 907/563-6555  15  16 Also Present:  17 Mike Jens  18 Raymond H. R. Tide  19  20 Reported by:  21 Angela Peronto, CSR, RMR  22  23 Summit Court Reporting, LLC  24  25</p>	<p>1 Anchorage, Alaska, Wednesday, 5/25/05, 9:00 A.M.  2 STEPHEN C. SCHWARTZ,  3 deponent herein, being sworn on oath by Angela  4 Peronto, was examined and testified as follows:  5 EXAMINATION  6 BY MR. DAVISON:  7 Q. Good morning, Mr. Schwartz. My name is  8 Bruce Davison. I represent Dick Pacific/Ghemm Joint  9 Venture.  10 Who are you here on behalf of this  11 morning?  12 A. I've been retained by Oles Morrison as  13 a consultant and expert on this matter; I guess  14 theoretically retained by Poong Lim Industrial.  15 Q. Who is paying you for the services you  16 render in this case?  17 A. My understanding is that Poong Lim is  18 paying me. All of the checks have come, to date,  19 from Oles Morrison.  20 Q. And do you have any sort of written  21 agreement or contract with either Oles Morrison or  22 Poong Lim regarding your services on this case?  23 A. Not a contract per se. But I have  24 provided Oles Morrison a couple of budget estimates  25 and a rate schedule.</p>
Page 3	Page 5
<p>1 I-N-D-E-X  2 EXAMINATION BY: PAGE  3 Mr. Davison 4  4  5 E-X-H-I-B-I-T-S  6  7 NUMBER PAGE  8 526 Various Documents 46  9 527 Schwartz Expert Report 84  10 528 Division 01 General Requirments 127  11 Section 01330 Submittal Procedures  12 529 Dick Pacific/Pert/Poong Lim Subcontract 170  13 530 Division 05 Metals, Section 05511 172  14 Metal Stairs  15 531 Exhibit 16.1-1 173  16  17  18  19  20 EXHIBIT <u>4</u>  21 Page <u>2</u> of <u>11</u> Pages  22  23  24  25</p>	<p>1 Q. Are you working on behalf of Sejin in  2 this case?  3 A. Technically I'm not sure, but I have  4 reviewed Sejin's documents and have utilized them  5 and their performance -- examined their performance  6 as part of my duties.  7 Q. Is there a contract between Sejin and  8 Poong Lim?  9 A. As I recall, there was.  10 Q. Have you reviewed that contract?  11 A. I believe I saw it, but it was in  12 Korean with a few words translated.  13 Q. Did you have the contract translated?  14 A. No.  15 Q. Did you discuss with anybody the terms  16 and conditions of that contract?  17 A. Only the extent of the amount of the  18 original contract, and I believe there were a couple  19 of change orders attached to it that revised the  20 amounts.  21 Q. All right. Have you reviewed the  22 dispute of resolution provisions in that contract,  23 if any?  24 A. As between?  25 Q. Sejin and Poong Lim.</p>

2 (Pages 2 to 5)

## STEPHEN C. SCHWARTZ, VOL. I

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<p>1 claims?</p> <p>2 A. They have claims for additional man</p> <p>3 hours expended due to failure of Dick Pacific to</p> <p>4 perform their agreed-upon obligations.</p> <p>5 Q. Well, I think you just conceded a</p> <p>6 moment ago that Sejin does not have a contract with</p> <p>7 Dick Pacific; correct?</p> <p>8 A. That's correct.</p> <p>9 Q. So what is the mechanism by which Sejin</p> <p>10 can assert claims against Dick Pacific?</p> <p>11 A. Whatever passed-through obligations</p> <p>12 Poong Lim may have against Dick Pacific.</p> <p>13 Q. And that in turn would be based on the</p> <p>14 contract between Poong Lim and Sejin; correct?</p> <p>15 A. It would be based on all of the</p> <p>16 understandings, contracts, and modifications to</p> <p>17 those contracts between Poong Lim and Dick Pacific,</p> <p>18 yes.</p> <p>19 Q. So the analysis and numbers that you</p> <p>20 have prepared on behalf of Sejin, those are being</p> <p>21 asserted against Poong Lim?</p> <p>22 A. My analysis of Poong Lim's performance</p> <p>23 was characterized as my expectation or my review of</p> <p>24 their performance and their impacts and the overruns</p> <p>25 that I would expect from those impacts. That's the</p>	<p>1 A. I would expect so, yes.</p> <p>2 Q. Doesn't that put you in a bit of a</p> <p>3 conflict, sir, assuming that Sejin has asserted a</p> <p>4 claim against Poong Lim, which you have quantified,</p> <p>5 in the event that Poong Lim does not recover that</p> <p>6 money from Dick Pacific on behalf of Sejin?</p> <p>7 A. That would be unfortunate.</p> <p>8 Q. Do you believe you're in a position of</p> <p>9 conflict?</p> <p>10 A. No.</p> <p>11 Q. Do you even know if under the contract</p> <p>12 between Sejin and Poong Lim, whether or not Sejin is</p> <p>13 entitled to any additional compensation?</p> <p>14 A. No. Well, let me -- again, since I</p> <p>15 haven't been able to read the contract, I don't know</p> <p>16 what their provisions are, and so the answer is no.</p> <p>17 Q. So you don't know what the contract</p> <p>18 says. Sejin has not prepared a claim.</p> <p>19 A. I didn't say that. I said I have not</p> <p>20 seen a claim.</p> <p>21 Q. You have not seen a claim, and you</p> <p>22 don't know of the existence of any claim?</p> <p>23 A. I think you're mischaracterizing a</p> <p>24 little bit what I said. I have reviewed certain</p> <p>25 claims of Sejin that were part of the Poong Lim</p>
Page 11	Page 13
<p>1 extent of it. I haven't attempted to characterize</p> <p>2 it legally as -- or specifically as you're</p> <p>3 characterizing it.</p> <p>4 Q. Well, as far as the analysis and</p> <p>5 opinions you've rendered on behalf of the money that</p> <p>6 is due -- you claim is due Sejin -- that would have</p> <p>7 to be asserted against Poong Lim before Poong Lim</p> <p>8 could assert that against Dick Pacific; correct?</p> <p>9 A. Well, first of all to clarify, I don't</p> <p>10 believe that I quantified an amount of money due</p> <p>11 Sejin by Poong Lim or by anybody. I prepared an</p> <p>12 analysis of what I would expect as overruns caused</p> <p>13 by problems not anticipated by Poong Lim, problems</p> <p>14 and circumstances -- Poong Lim or Sejin -- and</p> <p>15 quantified what I would expect as a number of hours</p> <p>16 overrun that would be attributable to those issues.</p> <p>17 I didn't quantify it in terms of dollars.</p> <p>18 Q. Well, is it your expectation that</p> <p>19 should Poong Lim be successful in recovering the</p> <p>20 money it seeks from Dick Pacific, that part of that</p> <p>21 money would flow back to Sejin?</p> <p>22 A. That's my understanding.</p> <p>23 Q. And in order for that to occur, Sejin</p> <p>24 must have some sort of a contract claim being</p> <p>25 asserted against Poong Lim; correct?</p>	<p>1 change order requests. Which part of those had been</p> <p>2 prepared or submitted by Sejin to Poong Lim, I can't</p> <p>3 say as we sit here today, and I don't know if I've</p> <p>4 reviewed the entire file and to identify it, which</p> <p>5 parts of those change order requests or claims were</p> <p>6 prepared and in what form by Sejin.</p> <p>7 Q. How much does Sejin claim it is owed by</p> <p>8 Poong Lim arising out of the Bassett project?</p> <p>9 A. I can't answer that as we sit here.</p> <p>10 Q. Do you have any idea?</p> <p>11 A. My recollection is in the change order</p> <p>12 requests they were asking for something like 9 or</p> <p>13 10,000 man hours additional.</p> <p>14 Q. You reviewed that change order request?</p> <p>15 A. Yes.</p> <p>16 Q. Is that partly the basis of the</p> <p>17 opinions contained in your expert report?</p> <p>18 A. Not really.</p> <p>19 Q. Is the -- is the change order request</p> <p>20 that you just identified, was that filed pursuant to</p> <p>21 the contract between Poong Lim and Sejin?</p> <p>22 A. That's my understanding. But you</p> <p>23 characterize a change order request. I believe</p> <p>24 there are several.</p> <p>25 Q. Right. There's several ones.</p>

## STEPHEN C. SCHWARTZ, VOL. I

<p style="text-align: right;">Page 14</p> <p>1 A. Yes.</p> <p>2 Q. Do you even know if the contract</p> <p>3 between Sejin and Poong Lim allows for change order</p> <p>4 requests?</p> <p>5 A. No.</p> <p>6 Q. Do you think that's important as far as</p> <p>7 being able to assert claims on behalf of Sejin</p> <p>8 against Dick Pacific?</p> <p>9 A. I don't know.</p> <p>10 Q. You don't know if it's important or</p> <p>11 not?</p> <p>12 A. Not having seen the contract, I, you</p> <p>13 know, whether the clauses or what clauses are in it.</p> <p>14 Q. Well, if there were no provision in the</p> <p>15 contract for Sejin to assert a claim against</p> <p>16 Poong Lim, wouldn't it be improper for Poong Lim to</p> <p>17 assert a claim against Dick Pacific on behalf of</p> <p>18 Sejin?</p> <p>19 MR. RUSK: Object to the extent it</p> <p>20 calls for a legal conclusion.</p> <p>21 THE WITNESS: I don't believe that at</p> <p>22 all. I believe the absence of any language</p> <p>23 regarding change order requests under a matter -- as</p> <p>24 a matter of equity if you have revisions to an</p> <p>25 agreement, you'd certainly have a right to pursue</p>	<p style="text-align: right;">Page 16</p> <p>1 depend on anything other than the change orders that</p> <p>2 have been propounded by Sejin?</p> <p>3 A. My analysis is based on all of the</p> <p>4 project documents that I reviewed, and I think as</p> <p>5 characterizing my report an analysis, I subtract out</p> <p>6 from my review and analysis those change order</p> <p>7 requests.</p> <p>8 Q. Well, how do you know Sejin has</p> <p>9 incurred any damages out of the Bassett project if</p> <p>10 Sejin has not asserted a claim against Poong Lim?</p> <p>11 MR. RUSK: Objection; assumes facts not</p> <p>12 in evidence.</p> <p>13 THE WITNESS: I'm not sure I</p> <p>14 characterized your -- I know the damages that Sejin</p> <p>15 has incurred for the overruns. I did my own</p> <p>16 separate analysis of what I would expect an overrun</p> <p>17 to be under the circumstances.</p> <p>18 BY MR. DAVISON:</p> <p>19 Q. How do you know that Sejin expects to</p> <p>20 be compensated for those overruns?</p> <p>21 A. I asked them.</p> <p>22 Q. And who did you talk to about that?</p> <p>23 A. Y.S. Kim.</p> <p>24 Q. And he's asked you to assert claims on</p> <p>25 behalf of Sejin against Poong Lim?</p>
<p style="text-align: right;">Page 15</p> <p>1 remedy or compensation for additional work.</p> <p>2 BY MR. DAVISON:</p> <p>3 Q. Is that under Korean law or American</p> <p>4 law?</p> <p>5 A. I believe -- again, I'm not going to</p> <p>6 offer a legal conclusion, but I can't imagine any</p> <p>7 law that would be -- prohibit seeking recovery from</p> <p>8 impacts.</p> <p>9 Q. Do you have any knowledge of Korean law</p> <p>10 that would support that conclusion?</p> <p>11 A. No.</p> <p>12 Q. The change orders that you just</p> <p>13 described that you've reviewed; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Is that -- are those change orders the</p> <p>16 basis -- the sole basis of Poong Lim's claim against</p> <p>17 Dick Pacific on behalf of Sejin?</p> <p>18 A. I don't know.</p> <p>19 Q. Well, do you know if Poong Lim is</p> <p>20 seeking to recover money from Dick Pacific/Ghemm for</p> <p>21 anything other than the change orders that you</p> <p>22 understand Sejin has propounded to Poong Lim?</p> <p>23 A. I don't know.</p> <p>24 Q. Does your analysis of Sejin's asserted</p> <p>25 recovery through Poong Lim against Dick Pacific</p>	<p style="text-align: right;">Page 17</p> <p>1 A. No.</p> <p>2 Q. All right. How is it then that</p> <p>3 Poong Lim can assert claims on behalf of Sejin if</p> <p>4 Sejin has not made such a request?</p> <p>5 A. I don't know that they haven't made</p> <p>6 such a request.</p> <p>7 Q. Have they made a request to you?</p> <p>8 You just said they had not; correct?</p> <p>9 A. A request for me to do what?</p> <p>10 Q. Assert claims against Dick Pacific on</p> <p>11 behalf of -- assert claims against Poong Lim on</p> <p>12 behalf of Sejin.</p> <p>13 A. My assignment was to evaluate the</p> <p>14 issues, the performance and the results, separate</p> <p>15 and apart from who was asserting claims against who.</p> <p>16 I was asked to evaluate the detailing performance</p> <p>17 and the impacts to those performance and prepare an</p> <p>18 evaluation of what I would expect would have been</p> <p>19 the results and which were -- that answers the</p> <p>20 question.</p> <p>21 Q. Would you agree with me, sir, that in</p> <p>22 general, North American construction practices,</p> <p>23 before a fabricator could assert a claim on behalf</p> <p>24 of a detailer, the detailer must assert a claim</p> <p>25 against the fabricator?</p>

5 (Pages 14 to 17)



## STEPHEN C. SCHWARTZ, VOL. I

<p style="text-align: right;">Page 18</p> <p>1 A. Generally, yes. Let me rephrase that.  2 The fabricator is responsible for the  3 detail. A good portion of the detailing is an  4 interaction between fabricator and detailer. The  5 fabricator -- the detailers are typically vendors,  6 not what I would call subcontractors. They're a  7 service provider. Whether performing under a  8 purchase order or subcontract, varies considerably.  9 In many cases they perform those functions under no  10 written agreement whatsoever.  11 But the fabricator himself has the  12 ability to analyze the total impacts to the  13 detailing process as well as the detailers do. And  14 it is not uncommon for them to do that. It's not  15 necessarily the norm.  16 Q. Well, you're not saying that in this  17 situation that the fabricator is entitled to recover  18 damages on behalf of a subcontractor or  19 vendor/detailer that the detailer has not asserted  20 is due and owing, are you?  21 A. No.  22 Q. So if Sejin has not asserted a claim  23 against Poong Lim, then Poong Lim cannot assert a  24 claim against Dick Pacific on behalf of Sejin.  25 Would you agree with that?</p>	<p style="text-align: right;">Page 20</p> <p>1 A. As a pass-through situation, yes.  2 Q. What does that mean, a "pass-through  3 situation"?  4 A. Well, the claims of Poong Lim are  5 passed through to Dick Pacific. The impacts as  6 claimed weren't due by Poong Lim. So by virtue --  7 Q. Do you mean Sejin's?  8 A. Sejin's claim -- Sejin had no contract  9 with Dick Pacific. So Sejin's claims would  10 technically be passed through Poong Lim to  11 Dick Pacific.  12 Q. And would that be a function of the  13 contract between Poong Lim and Sejin, in your  14 experience?  15 A. That would be a function of, in my  16 experience, the general relationship between a  17 vendor and subcontractor and the ultimate client or  18 the ultimate responsible party.  19 Q. In the U.S. or in Korea?  20 A. Everywhere. Well, I can't say with  21 Korea. In my experience in the U.S., that's  22 correct.  23 Q. So as I understand your testimony then,  24 if -- even though if Dick Pacific had no contract  25 with Sejin, it is your belief and understanding that</p>
<p style="text-align: right;">Page 19</p> <p>1 MR. RUSK: Object to the form.  2 THE WITNESS: That's a theoretical  3 question that you're asking me. And so that's the  4 question: Are you asking me a theoretical question?  5 BY MR. DAVISON:  6 Q. I'm just asking you the question  7 however you choose --  8 A. Based on theory, I think that's a legal  9 conclusion. It would require a legal conclusion,  10 which I probably couldn't offer. To the extent that  11 it's my understanding that Poong Lim and Sejin do  12 have open issues, I would believe that Sejin has  13 open claims against Poong Lim.  14 Q. How do you know what to assert on  15 behalf of Sejin as far as a claim against Poong Lim?  16 A. My analysis, it wasn't based on knowing  17 how much or how. My analysis as stated was strictly  18 an evaluation of what I would expect as a, under the  19 circumstances, a compensable overrun that would be  20 owing to Sejin by someone, based on their  21 understandings and their agreements to proceed.  22 Q. So in your report when you have  23 analyzed the cost overruns of Sejin, your opinion is  24 is that is the amount of compensation due Sejin from  25 Poong Lim?</p>	<p style="text-align: right;">Page 21</p> <p>1 if Dick Pacific caused some impact to Poong Lim that  2 affected Sejin, Sejin would be entitled to assert a  3 claim through Poong Lim against Dick Pacific?  4 A. I'm not sure I followed that. You  5 might try to state that question or read it back so  6 I can.  7 Q. Your testimony is that you believe the  8 damages asserted on behalf of Sejin are in the form  9 of, to use your term, a pass-through claim against  10 Dick Pacific?  11 A. You're -- I believe as I stated in my  12 report that Sejin was damaged during their  13 performance of the work on the project. And I did  14 an evaluation of what I would expect their overrun  15 to be. I don't know the total extent of the claims  16 for damages of Sejin or Poong Lim against DPG. So I  17 can't answer your question the way you're starting  18 to phrase it.  19 Q. Well, I just want to understand, sir,  20 your opinion on this pass-through issue.  21 We've agreed that there's a -- the  22 basis of the relationship between Poong Lim and  23 Sejin is based on a contract; correct?  24 A. No, I don't think we're agreed to that.  25 Q. All right. Is there some other basis</p>

6 (Pages 18 to 21)

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1 other than a contract that forms a relationship  
2 between Poong Lim and Sejin for the Bassett project?

3 A. My understanding on -- in -- with the  
4 Korean way of doing business and contracting is a  
5 lot of their understandings are unwritten and are  
6 based on commitments, verbal agreements, and the  
7 agreements of the parties to honor those  
8 commitments.

9 Q. You're in agreement with me that Sejin  
10 does not have a contractual basis for suing  
11 Dick Pacific directly?

12 A. Not that I'm aware of.

13 Q. So as I understand your testimony,  
14 Sejin has asserted claims against Poong Lim in the  
15 form of change order or other discussions; correct?

16 A. That's my understanding.

17 Q. And, in turn, Poong Lim has asserted  
18 those claims against Dick Pacific/Ghemm; correct?

19 A. I don't know. I can't say to what  
20 extent they have done it. I know they have asserted  
21 certain -- submitted certain change order requests  
22 that involve Sejin. But I don't know the extent  
23 of -- the total extent of the claims that Poong Lim  
24 has asserted against DPG that may involve Sejin.

25 Q. So you're saying that the claims could

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1 be different than you have analyzed in your report?

2 A. I haven't analyzed specifically the  
3 claims of Poong Lim and Sejin. I have reviewed the  
4 change order requests. But I have done an analysis  
5 of what I would expect the overruns and the --  
6 primarily the man hour overruns that I would  
7 expected of Poong Lim and Sejin to incur based on  
8 the performance -- their performance and the impacts  
9 to their performance.

10 Q. You've segregated those numbers in your  
11 report; correct?

12 As we sit here today, you can tell me  
13 by reviewing your report how much you believe Sejin  
14 should be compensated for extra work or extra man  
15 hours or impact it occurred on this project;  
16 correct?

17 A. I could say -- yes, with respect to man  
18 hours.

19 Q. And it's your opinion that somebody  
20 other than Poong Lim is liable for those man hour  
21 overruns?

22 A. Yes.

23 Q. And --

24 A. The man hour overruns that I have  
25 developed, not their total man hour overruns.

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1 Q. Understood.

2 You haven't looked at the other change  
3 orders in the context of your man hour evaluations?

4 A. I've subtracted the other change order  
5 requests from my evaluations where it was  
6 appropriate to subtract them.

7 Q. And it's your understanding -- and I  
8 think you agreed with me that because Sejin has no  
9 contract with Dick Pacific, that in order for Sejin  
10 to recover for those extra man hours that you've  
11 calculated and evaluated in your report, that claim  
12 for extra man hours must first be asserted against  
13 Poong Lim, and then Poong Lim can pass through that  
14 claim to Dick Pacific.

15 Is that your -- is that what you've  
16 said?

17 A. I don't think I've said that at all.

18 Q. Let me try the question this way.

19 Poong Lim subcontracted out the  
20 detailing and shop drawings to Sejin; correct?

21 A. They have an agreement to prepare shop  
22 drawings -- or agreement for preparation of shop  
23 drawings. Whether you'd characterize it as a  
24 subcontract or a purchase order, I'm not sure what  
25 the document said it was.

Page 25

1 Q. Poong Lim and Sejin are two different  
2 entities, are they not?

3 A. Yes.

4 Q. The same -- comparable to the industry  
5 in the U.S. where one business perhaps is a  
6 fabrication business and when they're performing  
7 fabrication work, they might subcontract out or send  
8 a purchase order or enter into some agreement with  
9 another business or company that provides shop  
10 drawings?

11 A. Yes, sir. I'm not in disagreement with  
12 the order of things that you're talking about, but  
13 it's the term "subcontract" that I've having  
14 difficulty with.

15 Q. All right. Let me just use the term  
16 "contract" then.

17 A. As long as that word is encompassing --  
18 is a generality that encompassed agreements, oral  
19 agreements, purchase orders, whatever, you can say  
20 that. The word agreement would probably be better.  
21 But you can use whatever you like as long as we  
22 understand that it's --

23 Q. All right. Now, do you agree with me  
24 that in order for Sejin to be compensated for what  
25 it feels were extra hours incurred outside or in

EXHIBIT

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7 (Pages 22 to 25)

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1 addition to what the agreement or contract between  
2 Sejin and Poong Lim acquired, that the claim for  
3 extra hours must be asserted against Poong Lim as  
4 opposed to Dick Pacific?

5 MR. RUSK: Object to the extent it  
6 calls for a legal conclusion.

7 THE WITNESS: I think that's kind of a,  
8 either a complex or a compound question. I'm trying  
9 to think of the answer. But the first part of it, I  
10 would have to answer I don't know what the  
11 understanding is between Poong Lim and Sejin as far  
12 as what Poong Lim might do to compensate Sejin for  
13 their additional hour overruns, irrespective of a  
14 claim or collection against Dick Pacific. So I  
15 can't speak to that.

16 BY MR. DAVISON:

17 Q. You used the term earlier,  
18 "pass-through."

19 A. Yes.

20 Q. All right. Does that mean that  
21 whatever claims Sejin has against Poong Lim, that  
22 Poong Lim is passing through those claims to  
23 Dick Pacific?

24 A. As I understand with respect to the  
25 change order request, Poong Lim is, in fact, passing

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1 through certain claims of Sejin to Dick Pacific.

2 Q. Now, what about the analysis you did of  
3 extra hours that Sejin allegedly incurred in this  
4 project, are those extra hours not also a  
5 pass-through claim through Poong Lim to  
6 Dick Pacific?

7 A. I don't know what has been done with  
8 the extra hours or the hours per my evaluation,  
9 whether they've been claimed against Poong Lim or  
10 claimed against Dick Pacific or anyone.

11 Q. Well, I mean, the extra hours that  
12 Poong Lim incurred -- excuse me -- that Sejin  
13 incurred, you have said in your report are the  
14 responsibility of Dick Pacific/Ghemm to pay for;  
15 correct?

16 A. I've asserted in my report that those  
17 additional hours are the responsibility of the  
18 actions or inactions of Dick Pacific. I don't know  
19 whether they've been submitted as a claim against  
20 Dick Pacific or not.

21 Q. Would you consider a lawsuit to be a  
22 claim?

23 A. Certainly. But I don't know what -- I  
24 don't believe I've ever read the complaint itself to  
25 even know what Dick Pacific -- or what Poong Lim has

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1 asserted in its totality against Dick Pacific.

2 Q. Let me just see if we can summarize it.

3 If Poong Lim is entitled to additional  
4 compensation for its contract, whether it's through  
5 change order or claims for extra hours of the nature  
6 you've described in your report, don't we have to  
7 characterize those claims as pass-through claims in  
8 order for Poong Lim to be able to assert those  
9 against Dick Pacific?

10 MR. RUSK: Object to the extent it  
11 calls for a legal conclusion.

12 THE WITNESS: I don't have a good  
13 answer for that because I don't know -- if we're  
14 talking theoretically, I don't know what the end  
15 result was of those numbers of man hour overruns  
16 that I came up with, whether they're even being  
17 submitted as a claim against Dick Pacific or not.

18 BY MR. DAVISON:

19 Q. If they were, would they be submitted  
20 in the context of a pass-through claim?

21 A. From Sejin?

22 Q. Yes.

23 A. I suppose so.

24 Q. And the reason that you would  
25 characterize those as pass-through claims is because

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1 it's your belief that Dick Pacific caused Sejin to  
2 incur those extra hours?

3 A. Yes.

4 Q. Now, would you agree with me that if it  
5 was the Corps of Engineers that caused Dick Pacific  
6 to cause Poong Lim to cause Sejin to incur the extra  
7 hours, that Dick Pacific could assert a pass-through  
8 claim against the Corps?

9 MR. RUSK: Object to the extent it  
10 calls for a legal conclusion.

11 THE WITNESS: Potentially, but I don't  
12 know where -- you know, it depends on what the  
13 contract said and what the matter of law is as far  
14 as who would be responsible. If the Corps was ruled  
15 to be responsible for those claims and they paid  
16 them, yes, I guess Dick Pacific wouldn't have to.

17 BY MR. DAVISON:

18 Q. What, sir, was your scope of work for  
19 the expert services that you are providing in this  
20 case?

21 A. Well, it was several-fold, but  
22 ultimately it was to prepare a report analyzing the  
23 required work under the agreement between Poong Lim  
24 and DPG, evaluate impacts to that performance, and  
25 to evaluate the results or the damages that I would

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8 (Pages 26 to 29)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the use  
of POONG LIM/PERT JOINT VENTURE,

Plaintiff,

vs.

DICK PACIFIC/GHEMM JOINT VENTURE,  
CONTINENTAL CASUALTY COMPANY,  
NATIONAL FIRE INSURANCE CO. OF  
HARTFORD, SEABOARD SURETY CO.,  
and ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,

Defendants.

Case No. A03-0290 Civil

DEPOSITION OF STEPHEN C. SCHWARTZ

VOLUME II

Pages 225 - 348, inclusive

Thursday, May 26, 2005, 1:30 P.M.

Taken by Counsel for Defendants

at

Law Offices of Oles, Morrison, Rinker & Baker, LLP

745 W. Fourth Avenue, Suite 502

Anchorage, Alaska

## STEPHEN C. SCHWARTZ, VOL. II

<p style="text-align: right;">Page 226</p> <p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 For Plaintiff:</p> <p>3 LAW OFFICES OF OLES, MORRISON, RINKER &amp; BAKER, LLP</p> <p>4 By: J. Craig Rusk, Esq.</p> <p>5 701 Pike Street, Suite 1700</p> <p>6 Seattle, WA 98101</p> <p>7 206/623-3427</p> <p>8</p> <p>9 For Defendants:</p> <p>10 LAW OFFICES OF DAVISON &amp; DAVISON</p> <p>11 By: Bruce E. Davison, Esq.</p> <p>12 3351 Arctic Boulevard</p> <p>13 Anchorage, AK 99503</p> <p>14 907/563-6555</p> <p>15</p> <p>16 Reported by:</p> <p>17 Angela Peronto, CSR, RMR</p> <p>18 Summit Court Reporting, LLC</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 228</p> <p>1 Anchorage, Alaska, Thursday, 5/26/05, 1:30 P.M.</p> <p>2 STEPHEN C. SCHWARTZ,</p> <p>3 deponent herein, being previously sworn on oath by</p> <p>4 Angela Peronto, was examined and testified as</p> <p>5 follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. DAVISON:</p> <p>8 Q. The witness is still under oath;</p> <p>9 correct?</p> <p>10 Will the witness acknowledge --</p> <p>11 A. Yes.</p> <p>12 Q. -- you understand you're still under</p> <p>13 oath?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Would you get your report, please,</p> <p>16 Exhibit 527. Turn, if you would, to Exhibit 24 of</p> <p>17 your report.</p> <p>18 Do you recall Exhibit 24 from</p> <p>19 yesterday?</p> <p>20 A. Yes, sir.</p> <p>21 Q. If you would, sir, would you -- now,</p> <p>22 this email is from Larry Johnson to Rick Jensen;</p> <p>23 correct?</p> <p>24 A. I assume so.</p> <p>25 Q. And I believe you testified yesterday</p>
<p style="text-align: right;">Page 227</p> <p>1 I-N-D-E-X</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Mr. Davison 228</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 E-X-H-I-B-I-T-S</p> <p>12 NUMBER PAGE</p> <p>13 536 Bassett Hospital "ABC" Contract 286</p> <p>14 Cost List</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">EXHIBIT <u>4</u></p> <p style="text-align: center;">Page <u>9</u> of <u>11</u> Pages</p>	<p style="text-align: right;">Page 229</p> <p>1 that you relied upon this email to support</p> <p>2 Poong Lim's contention that there was a two-week</p> <p>3 turnaround on shop drawings.</p> <p>4 Do you recall that testimony?</p> <p>5 A. I recall my testimony regarding that</p> <p>6 there was other documents in this -- and this is a</p> <p>7 document in this report that confirmed the</p> <p>8 understanding of the two-week turnaround, yes.</p> <p>9 Q. Look in the very first line after the</p> <p>10 salutation there, "Rick," where it says, "Please</p> <p>11 consider our statement in Korea that we -- I'm</p> <p>12 emphasizing we -- would require two weeks to return</p> <p>13 posted shop drawings basically as an overly</p> <p>14 optimistic commitment."</p> <p>15 In your opinion, Mr. Schwartz, who does</p> <p>16 the "we" refer to?</p> <p>17 A. I would only be speculating, but I</p> <p>18 would suspect that Larry Johnson was referring to</p> <p>19 HKS.</p> <p>20 Q. Thank you.</p> <p>21 Now go to the next paragraph, paragraph</p> <p>22 1, where Mr. Johnson offers an explanation of</p> <p>23 why HKS was overly optimistic.</p> <p>24 Do you see that paragraph 1?</p> <p>25 Would you please read it to yourself.</p>

2 (Pages 226 to 229)

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## STEPHEN C. SCHWARTZ, VOL. II

<p style="text-align: right;">Page 242</p> <p>1 But that submittal was submitted by  2 hand to HKS in Korea is my understanding or to DPG  3 in Korea, that initial submittal that you looked at.  4 Q. But do you know the first date that  5 submittals were made by Poong Lim to the Project  6 Point web site?  7 A. No. I would only be speculating. On  8 the submittals, what I call -- the numbering on the  9 left-hand column, just for anyone's information, I  10 created so I could sort these.  11 Q. Under submittal number?  12 A. Under submittal number, those are my  13 numbers.  14 And as I recall, the next submittal,  15 whether it would be named as 2.1, the 5202 submittal  16 was the first one sent to Dallas -- or sent to the  17 web site.  18 Q. Now, what's the significance of the  19 date under the Date Approved column?  20 A. That's the date in Poong Lim's record  21 that they received the drawing or they recognized it  22 as being received. They either found it on the web  23 site or whatever.  24 Q. Received and approved by the engineer  25 of record?</p>	<p style="text-align: right;">Page 244</p> <p>1 think they were -- or approved with corrections  2 noted or sent "revise and resubmit," that's the date  3 they were returned to Poong Lim.  4 I have not gone into an analysis of  5 when final drawings were ultimately approved by or  6 accepted as approved by anybody.  7 Q. Take a look at what you've labeled  8 Submittal No. 7.1, 7.2, 7.3, and 7.4.  9 A. Yes.  10 Q. Now, under 7.1, you've listed 85  11 sheets?  12 A. Yes.  13 Q. And you've got the date of submittal is  14 05/25/02?  15 A. Yes.  16 Q. And you've got the date of return,  17 which is the corrected heading for that column, as  18 06/28/02?  19 A. Yes.  20 Q. What was the state of the drawings that  21 were returned on 06/28/02?  22 A. Without looking at each individual  23 drawing, I don't know.  24 Q. Could some of the drawings have  25 required resubmittal by Poong Lim to the engineer of</p>
<p style="text-align: right;">Page 243</p> <p>1 A. The return date.  2 Q. Now, if there were -- if there was more  3 than one submittal, there would be more than one  4 return date; correct?  5 Let me strike that. That was a poorly  6 worded question.  7 For a given shop drawing, there might  8 be more than one submittal before it's approved by  9 the engineer of record; correct?  10 A. That's correct.  11 In answer to your question, that column  12 should be headed Date of Return.  13 Q. Of which shop drawing, if there were  14 multiple submittals of a shop drawing?  15 A. This is a summary of the original shop  16 drawing structural submittals.  17 Q. Well, I still don't understand what the  18 date of return means.  19 Is that the final approval by the  20 engineer of record so that the shop drawing can be  21 released for fabrication?  22 A. That's the date that that original  23 submittal, the drawings in that submittal, were  24 returned to Poong Lim.  25 Whether it was approved -- I don't</p>	<p style="text-align: right;">Page 245</p> <p>1 record?  2 A. Possibly.  3 Q. So this date under date of return, as I  4 understand your testimony, is the date of the first  5 return by the engineer of record and does not  6 account for whether the drawing has to be  7 resubmitted to the engineer of record; is that  8 correct?  9 A. That's correct.  10 Q. And then the second document in this  11 exhibit, what information does that intend to  12 convey?  13 A. It's simply a graphical representation  14 of the data on the spreadsheet.  15 Q. Turn, if you would, sir, to Exhibit 20  16 of your expert report. That's a one-page  17 spreadsheet titled, Bassett Hospital replacement  18 detailing manhour summary, dash, estimate and  19 actual; is that correct?  20 A. Yes.  21 Q. What's the purpose of this exhibit?  22 A. I asked Y.S. Kim of Sejin detailing to  23 provide me the best information that he had  24 available in different categories of activity of  25 what his estimated hours were and if he knew what</p>

EXHIBIT

4

6 (Pages 242 to 245)

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## STEPHEN C. SCHWARTZ, VOL. II

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1 his actual hours were expended for those tasks.  
 2 I created the blank sheet, and under  
 3 "Comments," Sejin detailing provided the comments  
 4 and all the numbers.

5 Q. So none of this data is your original  
 6 data?

7 A. The numbers are not my numbers. They  
 8 were entered into the sheet by, I presume, Y.S. Kim  
 9 at Sejin.

10 Q. And the comments, who prepared the  
 11 comments?

12 A. Sejin or Poong Lim. I believe it was  
 13 Sejin detailing.

14 Q. And where are the documents that you  
 15 relied upon to prepare Exhibit 20?

16 A. I didn't prepare Exhibit 20. I  
 17 prepared the blank sheet and emailed it to Sejin,  
 18 and Sejin emailed it back to me -- or Poong Lim  
 19 emailed it back to me with that information filled  
 20 in.

21 Actually, I take that back. I handed  
 22 it to them in November in Seattle, this blank sheet,  
 23 on a flash drive. He put it on his computer, and it  
 24 was returned to me in this form completed.

25 Q. So this Exhibit 20 was not prepared by

Page 247

1 you. It was prepared by Sejin?

2 A. The data in the exhibit was prepared by  
 3 Sejin. It was provided by Sejin in a form, and a  
 4 blank form filled out or prepared by me.

5 Q. Well, let's look at the first line item  
 6 there, building sequence No. 1 to No. 4, structural  
 7 steel.

8 There's the No. 7,000?

9 A. Yes.

10 Q. What does that number mean?

11 A. If Sejin correctly interpreted my  
 12 request to have for building sequence 1 to 4  
 13 structural steel, the estimated detailing hours he  
 14 wrote in there, 7,000, was his estimated detailing  
 15 hours for structural steel building sequence 1 to 4.

16 Q. Let me just be clear.

17 This information came from Mr. Kim at  
 18 Sejin?

19 A. I believe so, yes.

20 Q. Not from Poong Lim?

21 A. That's my recollection.

22 Q. Now, what information did you look at  
 23 to verify the accuracy of the 7,000 estimated  
 24 detailing labor hours under entry No. 1 there?

25 A. Nothing.

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1 Q. Is that true of the remainder of the  
 2 numbers in the column, estimated detailing labor  
 3 hours?

4 A. Yes, sir.

5 Q. Now, the next column, actual detailing  
 6 labor hours.

7 Are you relying completely and totally  
 8 upon the numbers furnished by Mr. Kim at Sejin?

9 A. For the individual elements of the  
 10 work, yes, although the manhour expenditures by  
 11 Sejin totaled approximately this 52,974 hours, if I  
 12 recall.

13 So there's another document that  
 14 matches that number. Approximately.

15 Q. Is that document contained in your  
 16 report?

17 A. As I recall, it is.

18 Q. What exhibit would that be?

19 A. 42, maybe.

20 Q. So do I understand your testimony to be  
 21 that Exhibit 20 was prepared independently of  
 22 Exhibit 42?

23 A. Exhibit 20 was filled in, the numbers  
 24 were filled in by Sejin detailing. I don't know  
 25 whether it was prepared independently of that sheet.

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1 Q. Where did you get Exhibit 42?

2 A. From the documents in the Oles Morrison  
 3 document room.

4 Q. And what -- why is Exhibit 42 important  
 5 to your report?

6 A. It provides the only basis that I have  
 7 for the total manhours expended for detailing and  
 8 when it was expended.

9 Q. Have you looked at any data that would  
 10 support or verify or substantiate the information  
 11 shown in Exhibit 42?

12 A. No specific data, no.

13 Q. Are you, sir, as we sit here today as  
 14 you're testifying under oath, are you testifying to  
 15 the accuracy of any of the numbers in Exhibit 42?

16 A. No, only to the extent that both  
 17 Y.S. Kim and one of his lead guys that helped put  
 18 this together said it was accurate to the best of  
 19 their knowledge.

20 Q. Now, did you review any other  
 21 accounting data from Sejin -- I'm going back to  
 22 Exhibit No. 20 -- to verify that, in fact, Sejin  
 23 kept track of hours according to the different areas  
 24 listed under the item count?

25 A. No, I haven't seen any written data.

EXHIBIT 4

7 (Pages 246 to 249)

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JORDAN ROSENFELD

Page 1

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the  
use of POONG LIM/PERT JOINT VENTURE,

Plaintiff,

vs.

DICK PACIFIC/GHEMM JOINT VENTURE,  
CONTINENTAL CASUALTY COMPANY,  
NATIONAL FIRE INSURANCE CO. OF  
HARTFORD, SEABOARD SURETY CO.,  
and ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY,

Defendants.

\_\_\_\_\_  
Case No. A03-0290 Civil

DEPOSITION OF JORDAN ROSENFELD

Pages 1 - 126, inclusive

Tuesday, May 31, 2005, 9:35 A.M.

Taken by Counsel for Defendants

at

Law Offices of Oles, Morrison, Rinker & Baker, LLP

745 W. Fourth Avenue, Suite 502

Anchorage, Alaska

EXHIBIT 5  
Page 1 of 4 Pages

## JORDAN ROSENFELD

Page 2	Page 4																														
<p>1 A-P-P-E-A-R-A-N-C-E-S</p> <p>2 For Plaintiff:</p> <p>3 LAW OFFICES OF OLES, MORRISON, RINKER &amp; BAKER, LLP</p> <p>4 By: Julia M. I. Holden, Esq.</p> <p>5 745 West Fourth Avenue, Suite 502</p> <p>6 Anchorage, AK 99501</p> <p>7 907/258-0106</p> <p>8</p> <p>9 For Defendants:</p> <p>10 LAW OFFICES OF DAVISON &amp; DAVISON</p> <p>11 By: Joseph A. Pollock, Esq.</p> <p>12 3351 Arctic Boulevard</p> <p>13 Anchorage, AK 99503</p> <p>14 907/563-6555</p> <p>15</p> <p>16 Also Present:</p> <p>17 Michael R. Hanrahan</p> <p>18</p> <p>19 Reported by:</p> <p>20 Angela Peronto, CSR, RMR</p> <p>21 Summit Court Reporting, LLC</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 Anchorage, Alaska, Tuesday, 5/31/05, 9:35 A.M.</p> <p>3 JORDAN ROSENFELD,</p> <p>4 deponent herein, being sworn on oath by Angela</p> <p>5 Peronto, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. POLLOCK:</p> <p>8 Q. Mr. Rosenfeld, we met before the</p> <p>9 deposition. My name is Joe Pollock. I'm an</p> <p>10 attorney for Dick Pacific/Ghemm joint venture and</p> <p>11 the four Miller Act sureties in the Poong Lim/Pert</p> <p>12 case.</p> <p>13 Today is the day that has been</p> <p>14 scheduled for your deposition surrounding the expert</p> <p>15 report that you've prepared in this case.</p> <p>16 Have you had your deposition taken</p> <p>17 before?</p> <p>18 A. Yes, I have.</p> <p>19 Q. How many times?</p> <p>20 A. About 25, maybe 30 times.</p> <p>21 Q. And of those depositions, how many were</p> <p>22 in the furtherance of providing expert testimony?</p> <p>23 A. Most of them, probably all but one or</p> <p>24 two.</p> <p>25 Q. So you're familiar with the process, as</p>																														
Page 3	Page 5																														
<p>1 I-N-D-E-X</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Mr. Pollock 4</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 E-X-H-I-B-I-T-S</p> <p>9</p> <table border="1"> <thead> <tr> <th>NUMBER</th><th>PAGE</th></tr> </thead> <tbody> <tr> <td>537</td><td>Rosenfeld Expert Opinion Report 6</td></tr> <tr> <td>538</td><td>Jens Expert Report Rebuttal 7</td></tr> <tr> <td>539</td><td>Handwritten Notes 15</td></tr> <tr> <td>540</td><td>Sutor Consulting Invoices 24</td></tr> <tr> <td>541</td><td>Bassett Hospital "ABC" Contract 51</td></tr> <tr> <td>542</td><td>Cost List</td></tr> <tr> <td>543</td><td>Poong Lim/Seijin Agreement 80</td></tr> <tr> <td>544</td><td>Profit Markup Summary 94</td></tr> <tr> <td>545</td><td>Bassett Hospital Project Replacement Spreadsheet 94</td></tr> <tr> <td>546</td><td>Non-Consolidated Financial Statements/Excerpt 105</td></tr> <tr> <td>547</td><td>Monthly Structural Steel Payroll Summary 111</td></tr> <tr> <td>548</td><td>Status of Manhour Analysis 114</td></tr> <tr> <td>549</td><td>Manhour by Trade 117</td></tr> <tr> <td>550</td><td>12-11-04 Letter to Gun Lee from Jordan Rosenfeld 118</td></tr> </tbody> </table> <p>25</p>	NUMBER	PAGE	537	Rosenfeld Expert Opinion Report 6	538	Jens Expert Report Rebuttal 7	539	Handwritten Notes 15	540	Sutor Consulting Invoices 24	541	Bassett Hospital "ABC" Contract 51	542	Cost List	543	Poong Lim/Seijin Agreement 80	544	Profit Markup Summary 94	545	Bassett Hospital Project Replacement Spreadsheet 94	546	Non-Consolidated Financial Statements/Excerpt 105	547	Monthly Structural Steel Payroll Summary 111	548	Status of Manhour Analysis 114	549	Manhour by Trade 117	550	12-11-04 Letter to Gun Lee from Jordan Rosenfeld 118	<p>1 far as how a deposition works?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. I'll be asking you a series of</p> <p>4 questions. You're under oath, and the testimony you</p> <p>5 provided today can be used in the litigation that's</p> <p>6 pending here in federal district court.</p> <p>7 If you don't understand a question that</p> <p>8 I ask, please just let me know, and I'll rephrase</p> <p>9 the question. But it's important that you</p> <p>10 understand the question.</p> <p>11 We're also trying to prepare a written</p> <p>12 transcript of your verbal testimony today. So it's</p> <p>13 important that you answer yes or no as opposed to</p> <p>14 uh-huh or huh-uh, that we might in casual</p> <p>15 conversation.</p> <p>16 It's also important that you allow me</p> <p>17 to complete my question before you answer so that</p> <p>18 the transcript is clear as to who is talking at a</p> <p>19 given time.</p> <p>20 Those are the basic ground rules.</p> <p>21 We'll take a series of breaks. I think we're</p> <p>22 scheduled for a three-hour deposition today. I</p> <p>23 think we'll take a break every 45 minutes to an</p> <p>24 hour. But for whatever reason, if you need to take</p> <p>25 a break, let me know, and we'll take a break.</p>
NUMBER	PAGE																														
537	Rosenfeld Expert Opinion Report 6																														
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2 (Pages 2 to 5)

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## JORDAN ROSENFELD

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1 to the original contract, taking the difference, and  
2 saying that's your damages?

3 Q. Yes.

4 A. For the subcontractors. That -- yes.

5 Q. That would be a total cost analysis in  
6 your view?

7 A. Yes.

8 Q. Okay.

9 So I guess my question again is what  
10 damages did Poong Lim suffer if it paid its  
11 subcontract laborers on a unit-price-per-ton basis?  
12 What damages did Poong Lim suffer for that work?

13 MS. HOLDEN: Objection, assumes facts  
14 not in evidence.

15 THE WITNESS: Yeah, I guess I can't  
16 answer the question. Because obviously if it was  
17 just on a unit-price-per-ton and the tons were the  
18 same, the subcontract amounts wouldn't have gone up.  
19 And it's obvious from the schedule, they did go up.  
20 So I just -- I don't see any basis for your  
21 question.

22 BY MR. POLLOCK:

23 Q. You have no reason -- you have no  
24 understanding of why the contract amounts went up;  
25 correct?

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1 A. Correct.

2 Q. And you're not sure whether the  
3 subcontract laborers were paid -- companies were  
4 paid on a unit-price-per-ton basis; correct?

5 A. Correct.

6 Q. Assuming that they were paid on a  
7 unit-price-per-ton basis, and that Poong Lim paid  
8 them the unit price for the work that they  
9 performed, what, if any, damages, in your view,  
10 would Poong Lim have suffered as a result -- what,  
11 if any, damages would Poong Lim have suffered?

12 A. Again, they suffered for the extra  
13 costs they incurred paying the subcontractors,  
14 however they arrived at that amount. And they did  
15 incur extra costs.

16 Q. And you would agree that the -- what  
17 would be the Sejin hourly rate? How did you arrive  
18 at the Sejin hourly rate?

19 A. Well, in the report the Sejin hourly  
20 rate determines the cost per ton -- I mean, the  
21 hours per ton and then multiplies that times the  
22 budgeted hours.

23 This is one of the items that has been  
24 changed in the schedules, the new schedules we've  
25 given you. It has a different estimated hours. It

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1 is now about 17,000 hours. So the rate has been  
2 reduced.

3 Q. Why did the number change?

4 A. Based on new information I received  
5 from Mr. Schwartz as to what the original estimate  
6 of the hours was for the detailing.

7 Q. Did you -- so for, if you start up on  
8 the top, you took the Sejin subcontract amount of  
9 325,000 won; correct?

10 A. Correct.

11 Q. And the contract tonnage. And those  
12 items were -- those numbers were derived from the  
13 Sejin subcontract?

14 A. Yes.

15 Q. And the estimated hours of 14,000 hours  
16 changing to 17,000 hours, where did that number come  
17 from?

18 A. The 14,000 or the 17?

19 Q. Either one.

20 A. The 14,000 came from a schedule that  
21 was provided by Poong Lim, a summary they had. The  
22 17,000, as I said, was a schedule I received from  
23 Mr. Schwartz.

24 Q. Did you ever discuss with anyone from  
25 Sejin their estimate relative to the hours that they

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1 planned to expend in detailing the project?

2 A. I didn't, because Mr. Schwartz was  
3 having that discussion with him.

4 Q. Did you -- what was your understanding  
5 with talking to Mr. Schwartz regarding Sejin's  
6 estimate of detailing hours?

7 A. I can't recall at this point. I think  
8 when he provided me the schedule, he went through  
9 that schedule so he could give me -- tell me what  
10 the hours were for the original estimate of the  
11 detailing.

12 Q. Was that schedule --

13 A. I --

14 Q. I'm sorry. Go ahead.

15 A. Other than that, I can't remember what  
16 else we discussed.

17 Q. Was that schedule contained in  
18 Mr. Schwartz's report?

19 A. I don't believe it was. I can't say.  
20 I can't remember everything that was in his report.

21 Q. Did you ever review a Sejin estimate  
22 for the work --

23 A. No.

24 Q. -- for the detailing?

25 A. No.

EXHIBIT

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of

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20 (Pages 74 to 77)

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## JORDAN ROSENFELD

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1 Q. So in -- is it accurate that in the  
2 14,000- or the 17,000-hour figure, those hours came  
3 exclusively from -- were either provided to you by  
4 Mr. Schwartz or by Poong Lim; is that correct?

5 A. Correct.

6 Q. Did you perform any independent  
7 investigation to determine the reasonableness of  
8 those estimated hours?

9 A. No.

10 Q. Is your answer the same as to the  
11 estimated tonnage, the 4,422?

12 A. Well, the tonnage is right off of the  
13 contract. So that could be verified, though the  
14 tonnage doesn't figure into my revised calculation  
15 at all.

16 Q. And the estimate hours per ton, is that  
17 a mathematical function?

18 A. Yes.

19 Q. Based on which two numbers?

20 A. That would be the 14,000 hours divided  
21 by the 4400 tons.

22 Q. And the contract hours, where did that  
23 number come from?

24 A. That would be the \$3.20 hours per ton  
25 times 4,499 tons.

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1 Q. Mr. Rosenfeld, we've handed you what  
2 has been identified as Exhibit --

3 A. 527.

4 Q. 527 to this series of depositions.  
5 Have you seen this report before?

6 A. I have not seen this whole binder  
7 before.

8 Q. What do you believe this report is?

9 A. It's Mr. Schwartz's expert report.

10 Q. Can you please take a look at Exhibit  
11 20, please. Have you seen Exhibit 20 before?

12 A. Yes.

13 Q. What do you believe Exhibit 20 to be?

14 A. It's a detailing manhour summary.

15 Q. Did you say you'd seen this before?

16 A. Yes.

17 Q. The estimated detailing labor hours are  
18 identified as 21,000 and change; correct?

19 A. Yes.

20 Q. But your estimate hours in your report  
21 are approximately 14,000 and change; correct?

22 A. That's in my initial report, yes.

23 Q. Do you have an explanation of the  
24 discrepancies between those two numbers?

25 A. Well, part of the 21,000 is for items

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1 not included in the 325-million-won contract amount.

2 Q. Which items are those?

3 A. The items that are not or are in  
4 included? Well, let's -- the ones that are included  
5 would be the first two items for 7,000 hours, 9500  
6 hours, and the last item of 500 hours. The other  
7 three are not.

8 Q. Steel stairs, exterior wall supports,  
9 and erection aids, it's your understanding that  
10 those amounts are not included in the 325,000?

11 A. Yes.

12 Q. Are you aware of any other  
13 discrepancies that would --

14 A. No.

15 Q. -- justify the difference between the  
16 two numbers?

17 A. No.

(Exhibit 542 marked.)

19 BY MR. POLLOCK:

20 Q. Mr. Rosenfeld, we've handed you what  
21 has been identified as Exhibit 542 to your  
22 deposition. Have you seen this document before?

23 A. Yes.

24 Q. And what is this document?

25 A. This is the agreement between Poong Lim

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1 and Sejin.

2 Q. And, in looking through this sequence  
3 of documents, does this lead you to conclude that  
4 exterior wall supports, stairs, steel stairs, and  
5 erection aids are or are not included in the  
6 \$325,000 number?

7 A. I don't know.

8 Q. If the estimated hours -- if, in  
9 looking at your report on page 3 and your cost per  
10 hour for Sejin, if the estimated hours were higher,  
11 what would the effect of that be on the contract  
12 rate -- contract dollar per hour?

13 A. That would lower the rate.

14 Q. And how much did Sejin get paid? Do  
15 you know?

16 A. I don't know the answer to that  
17 offhand.

18 Q. Take a look at your gross profit  
19 analysis sheet attached to your report, item 766,  
20 outsourcing design. Do you see that number?

21 A. Yes.

22 Q. Do you think that the category,  
23 outsourcing design, No. 766, with a total of 311,000  
24 through 2003, do you believe that that is the amount  
25 that Poong Lim paid to Sejin for detailing?

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21 (Pages 78 to 81)

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